

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Wilbur Wilkinson, on behalf of)	
Ernest and Mollie Wilkinson,)	
)	
Complainant)	
)	SOL Docket No. 07-0196
v.)	
)	
)	
Edward Schafer, Secretary)	
United States Department of Agriculture)	
)	
Respondent)	

DETERMINATION: PART ONE

1. The Nature of this Proceeding

This proceeding is an administrative adjudication under “Section 741” of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (7 U.S.C. § 2279 note) and the applicable rules of practice (7 C.F.R. Part 15f). Section 741, waives an otherwise applicable two-year statute of limitations. It allows a person who, during the period 1981-1996, filed an eligible complaint of discrimination against the United States Department of Agriculture (“USDA”) for having violated the Equal Credit Opportunity Act (15 U.S.C. §§ 1691-1691f) to obtain a determination of the complaint’s merits by USDA, and receive the relief provided by the Equal Opportunity Act to those who have suffered discrimination by USDA acting as a creditor in respect to any aspect of a credit transaction, or in USDA’s administration of a commodity assistance or disaster relief program. The rules

of practice allow the complainant to have the complaint determined by an Administrative Law Judge (“ALJ”) after a hearing, or, after requesting such a hearing, to request the ALJ to issue a decision without a hearing (7 C.F.R. § 15f.11-.16). Complainant after several initial telephone conferences respecting the scope of the hearing and discussion of various motions by the Agency, elected to have the issue of whether there is actionable discrimination decided by me as the assigned ALJ without a hearing and, if I find in complainant’s favor, to then assess damages after holding a hearing. Respondent has as part of its response to Complainant’s Motion for Summary Judgment, filed a Cross-Motion for Summary Judgment. Therefore, this Determination: Part One concerns whether the complaint before me states a timely, eligible complaint of discrimination against USDA. For the reasons hereinafter stated, I find that it does. The assessment of damages shall be made in Determination: Part Two after an evidentiary hearing scheduled for June 25-26, 2008.

2. General Background

Complainant, Wilbur Wilkinson, is the son and a principal heir of Ernest and Mollie Wilkinson, a Native American husband and wife, who were members of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. Mollie Wilkinson died in September 1991. Ernest Wilkinson died in November 1997. On his parents behalf, Complainant seeks redress for racial discrimination against them under the Equal Credit Opportunity Act (“ECOA”; 15 U.S.C. § 1691(a)). Wilbur and Mollie Wilkinson were dispossessed from their family farm/ranch that consisted of allotments of land held in trust for them by the United States Department of Interior’s Bureau of Indian Affairs (“BIA”). The dispossession resulted from collaborative action by BIA and the United

States Department of Agriculture's Farm Service Agency (formerly the Farmers Home Administration; "FSA" shall be used for both).

A mission of FSA is to extend financing to farmers through farm ownership loans. Ernest and Mollie Wilkinson, as registered members of the Three Affiliated Tribes, owned descendable possessory interests in allotted Indian Land held in trust for them by BIA. Through a family farming enterprise with their children, the Wilkinsons farmed these lands together with land owned by the children. Starting in the 1970's, Ernest and Mollie Wilkinson borrowed against their own allotted trust land by encumbering them with mortgages as individual Indian owners are permitted to do under 25 U.S.C. § 483a, to obtain loans from FSA. The Secretary of the Interior approved the mortgage loans.

As a precondition for receiving and renewing the FSA loans, Ernest and Mollie Wilkinson were required by FSA to execute, in addition to the mortgages, BIA "Assignment of Income from Trust Property" forms. When payments of these loans to the Wilkinsons were considered to be too-long overdue and the accrued debt excessive, FSA would notify BIA officials who then leased the trust lands that made up the Wilkinsons' farm to other farmers and the proceeds from the leases were turned over by BIA to FSA. The Wilkinsons were thereby dispossessed from their farm, their homestead, and associated personal property without FSA going through mortgage foreclosure proceedings.

This collaborative use of these income assignment forms in avoidance of mortgage foreclosure has been the subject of federal court litigation brought by the Wilkinsons' heirs against BIA.

An initial dismissal on the jurisdictional ground that the heirs lacked standing, was reversed and remanded with instructions on applicable law by the Eighth Circuit in *Wilkinson v. U.S.*, 440 F.3d 970 (8th Cir. 2006). In rejecting a government argument that the land could be taken without honoring applicable state law procedural safeguards for the protection of mortgagors because the debt exceeded the value of the mortgaged land, the Eighth Circuit Court held:

Although the government argues that the loan and assignment documents provided for this ‘self-help’ remedy, the controlling federal law that authorizes mortgages on allotted Indian lands makes clear that tribal law (if any) or state law limits the availability of foreclosure or sale. 25 U.S.C. § 483a provides:

(a) The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust *in accordance with the laws of the tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the State or Territory in which the land is located....*

Id. (emphasis added).

There is no applicable tribal foreclosure law in this instance, so North Dakota law applies. Under North Dakota law, a mortgagor is entitled to a right of redemption during a redemption period. N.D. Cent. Code §§ 28-24-02 & 32-19-01 (1997). Also, the government has identified no authority under North Dakota law authorizing a mortgagee to take possession under an assignment of rents outside judicial proceedings. As a matter of public policy intended to prevent desperate borrowers from waiving valuable rights when trying to secure a loan, North Dakota does not permit borrowers to waive redemption rights prior to foreclosure. *See, e.g., First State Bank of New Rockford v. Anderson*, 452 N.W.2d 90, 92 (N.D.1990) (explaining that a mortgagor may not “bargain away” his or her redemption rights). Accordingly, as a matter of law, no provisions in the loan documents or assignments of trust income that Ernest and Mollie executed could have suspended the application of North Dakota’s law governing redemption rights nor waived a debtor’s protection against extrajudicial appropriation of mortgaged land. As such, the government’s argument that the loan and assignment of income documents granted the FSA the right to take possession of the land fails....

440 F.3d at 975-976, fn. 5.

Pursuant to the remand order, Judge Rodney S. Webb, United States District Court for the District of North Dakota, Southwestern Division, entered an opinion and order holding BIA liable for damages in *Virgil Wilkinson, et al v. United States of America*, Case No. 1:03-cv-02; 2007 WL 3544062 (November 9, 2007).

The Court found that the leasing of the Wilkinsons' trust lands that caused third parties to enter and interfere with the allotments of the Wilkinsons, met the definition of trespass under North Dakota law. Moreover, when BIA leased these allotments:

...its intent was to benefit FSA by generating revenue to pay the outstanding FSA debt.

Slip opinion, at 10-11.

The Court further found that the United States converted the equipment on the Wilkinsons' farmland:

No agency of the United States took physical possession of the Wilkinsons' equipment. However, the leasing of their allotments had a paralyzing effect on their farming operation, even if the United States did not take all their farmland. The BIA's deplorable actions eliminated the use of the equipment. This conduct is a sufficient exercise of dominion or control over the equipment to justify a forced sale. Therefore, the United States converted the Wilkinsons' equipment.

Slip opinion, at 14.

The actions of the United States were held to have intentionally inflicted emotional distress ("IIED") upon the Wilkinsons.

The BIA acted in the best interests of the FSA, not their fiduciary trust beneficiaries, the Wilkinsons. For years, the BIA has directly interfered with the Wilkinsons' allotment interests. The BIA also ignored a directive of the IBIA (Interior Board of Indian Appeals July 6, 1998 decision, Complainant's Exhibit B-68). This Court finds its actions show an extreme and outrageous disregard for our government's conflict resolution system. Furthermore, the employees of the BIA could see their defiance of the IBIA decision was resulting in great emotional

angst for the Wilkinsons. Despite this, they continued denying the Wilkinsons their allotment rights. The Court finds the BIA acted at least recklessly. Furthermore, the Wilkinsons would not have suffered any emotional distress without the actions of the BIA, so the BIA caused the distress. Therefore, the Court finds the Wilkinsons have met the element of IIED.

Slip opinion, at 15-16.

In assessing non-economic damages in addition to economic damages, the Court was asked to base them on the same ratio used in *In re: Warren*, USDA Docket No. 1194, HUDALJ No. 00-19-NA (USDA Dec. 19, 2002) to assess damages for racially discriminatory denial of farm benefits. The Court did not apply the Warren methodology for assessing damages, but stated:

Like *Warren*, however, this case also presents outrageous conduct of a government agency. For practical purposes, two agencies, the BIA and the FSA, conspired with each other to deprive a family of its farming operation...

Slip opinion, at 25.

3. The Complaint in this Proceeding is an Eligible Complaint that was Timely Filed

On March 5, 1990, before the institution of the litigation in the federal courts against BIA, the Complainant, Wilbur Wilkinson, filed a discrimination complaint against the Farmers Home Administration (FmHA) on behalf of his parents and other Native Americans who had obtained farm ownership loans on land held in trust by BIA at the Fort Berthold Reservation. The stated basis of the complaint was:

(B)ecause of their race as American Indians the attached list of Indian FmHA loan clients were required to sign Assignments of Income from trust property and non-Indians are not required to sign such or similar documents.

The facts stated as underlying the complaint were:

Because of their race as American Indians the Farmers Home Administration implemented a policy that Indian loan clients as a matter of course and solely because they are by birth American Indians, submit as a precondition for loan approval a form entitled "Assignment of Income from Trust Property" authorizing

FmHA to withdraw funds from Individual Indian Money (“IIM”) at will, in violation of the Equal Protection and Due Process Clauses of the United States Constitution. Non-Indian borrowers are not required to sign Assignments of Income nor are their checking and savings accounts subject to attachment without due process.

Complainant’s exhibit B-1.

It is this complaint that is the subject of this present proceeding. The reason why the date it was filed with the Farmers Home Administration, the predecessor of the Farm Service Agency, is critical in this proceeding was explained in *Love v. Connor*, 525 F.Supp.2d 155, 157(D.D.C. 2007):

There is little dispute that USDA dismantled its civil rights investigation program between the early 1980’s and the mid-1990’s, and did so without informing farmers that their discrimination complaints would be either ignored or summarily denied. *See generally USDA Civil Rights Action Team Report: Civil Rights at the U.S. Dept. of Agriculture ...*; 144 Cong. Rec. S11,433 (Sen. Robb). When Congress learned of this state of affairs, it extended for two years the period of limitations for any cause of action that a plaintiff might bring to redress claims she had filed with USDA in an ‘eligible complaint.’ *See* Pub.L.No. 105-277, 112 Stat. 2681-30, Title VII, Sec. 741 (codified at 7 U.S.C. § 2279 Note) (hereafter “§ 741”). Eligible complaints were defined as complaints filed with USDA between 1981 and 1996 that complained of violations of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq., or of discrimination in the administration of a commodity assistance or disaster relief program. *See* “§ 741 (e)....

On its face, the complaint (A-1) that Wilbur Wilkinson filed on behalf of his parents and other members of the Three Affiliated Tribes of the Berthold Reservation, was a timely and eligible complaint as required by Section 741:

1. The date of its filing, March 5, 1990, places it squarely within the critical 1981-1996 time period that exempts it from the otherwise operable statute of limitations.
2. The complaint was an eligible complaint that alleged a discriminatory violation of the ECOA. It unequivocally stated that FmHA had required Ernest and Mollie Wilkinson because they were American Indians to sign BIA “Assignment of

Income Trust Property” forms, whereas FmHA did not require non-Indians to sign these or similar forms.

3. The complaint, just below “Complaint # FB-008”, at the top left-hand corner, was correctly addressed to:

USDA Farmers Home Administration
Mr. William S. True
Director, Equal Opportunity Staff
14th and Independence Ave., SW
Room 5050 – S
Washington, D.C. 20250

4. A copy of the complaint was also sent and addressed at the top right-hand corner to:

Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

5. Proof of the complaint’s mailing in March of 1990 is provided by a receipt from the Parshall, North Dakota post office, dated March 12, 1990, for the copy sent by certified mail to the Federal Trade Commission (A-2).

6. Complainant swore in the affidavit he gave, in 1999, to two investigators from the USDA’s Office of Civil Rights that he mailed this and other complaints to FmHA and the FTC in Washington, D.C. (Complainant’s Exhibit C-1 at page 19).

The fact that Complainant has provided this receipt and not one for the copy sent to FmHA, is being used by the Agency as the basis for a challenge first expressed in the Cross-Motion for Summary Judgment it filed on May 9, 2008, that there is no proof that FSA received the complaint and it should for that reason be rejected and dismissed as not timely filed.

However, in a letter to Wilbur Wilkinson, dated April 3, 2003, from Ruihong Guo, Acting Chief, Program Investigations Division, Office of Civil Rights, United States Department of Administration, the complaint and its filing on March 5, 1990 is acknowledged. The second paragraph of the letter states:

Please note that the complaint you filed on March 5, 1990, has been assigned SOL Docket Number 2478 and is now being processed under section 741 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1999, Public Law 105-227, also known as the SOL processing.

(A-5).

If the complaint had not been received by FmHA, but had instead been routed to it from the Federal Trade Commission, it would be expected that Mr. Guo, the acting Chief and spokesman for the Program Investigations Division would have said so. It is therefore reasonable to infer that the complaint was received in the regular course of business by FSA's predecessor FmHA by way of certified mail delivered to it in the normal manner by the United States Postal Service.

Respondent also alleges that the complaint is untimely because it does not comply with the requirement of 7 C.F.R. § 15d.4(a) that a complaint must be filed within 180 days from the date the person knew or reasonably should have known of the alleged discrimination. Respondent bases this argument on the fact that Ernest Wilkinson wrote to Senator Kent Conrad, on April 26, 1989, complaining that the reservation supervisor, "...has acted in extremely bad faith bordering on criminal actions in his dealing with me."(B-53). Obviously, Ernest Wilkinson had by that time come to believe that the reservation supervisor was not dealing with him fairly, but his stated concern gives no indication that he or his son, Wilbur, then appreciated that the Assignment of Income

from Trust Property forms he and his wife were being required to sign constituted discriminatory treatment actionable under the ECOA.

Accordingly, I conclude that the Complaint was timely filed in compliance with both Section 741 and 7 C.F.R. § 15d.4(a).

4. The Actionable Discrimination under ECOA

The way in which the Assignment of Income from Trust forms were illegally used by BIA at the behest of the FSA to confiscate the farmland possessed by Ernest and Mollie Wilkinson is set forth at length in the decisions by the United States Circuit Court for the Eighth Circuit and, after remand, by the United States District Court for the District of North Dakota. The fact that the District Court decision is presently on appeal does not alter the fact that it has binding effect unless and until it is reversed. In accordance with the doctrine of issue preclusion, both decisions shall be applied as controlling in the instant proceeding as they pertain to common issues of law. *See In re: Kreider Dairy Farms, Inc.*, 62 Agric. Dec. 406, 423-425 (2003), *citing United States v. Musick*, 534 F. Supp. 954, 956-957 (N.D.Cal. 1982).

...the general rule is that a decision in one case is controlling as the law in a related action if it involves the same subject matter and if the points of the decision and facts are identical.

Id. at 425.

The two decisions by the Federal courts are controlling law in this proceeding in respect to their holdings that the government circumvented North Dakota mortgage foreclosure laws that: (1) if they had been observed, would have provided the Wilkinsons procedural protections against the confiscation of their land and related chattels; and (2)

the BIA Assignment of Income from Trust forms were illegally employed to accomplish these confiscations in order to help FSA collect its loans to the Wilkinsons.

The issue now before us is whether FSA's instigation of these illegal actions constituted discrimination against the Wilkinsons under the ECOA (15 U.S.C. § 1691 (a) (1) that provides:

- (a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction-
 - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract).

Complainant has furnished copies of Income Assignments required of the Wilkinsons and other Native Americans by FSA as a precondition for farm loans (B-7), and copies of those FSA employs for White borrowers (B-6). FSA has also supplied forms it requires for income assignments by White farmers in North Dakota, and argues that it shows equal treatment to Native American and White farmers. (Radintz Declaration Exhibit 1). But the income assignment forms Native American farmers were required to sign were written differently from those used for White farmers. More importantly, the Income Assignments required of Native Americans can be used, and in the case of the Wilkinsons were used, to confiscate their farms in circumvention of the protections North Dakota affords mortgagors under its foreclosure laws.

Complainant filed an affidavit (Complainant's Exhibit C-1), dated November 17, 1999, that he gave to two investigators for USDA's Office of Civil Rights in which he swore that his parents upon becoming delinquent in paying their loans were treated differently than were White farmers. His affidavit alleges FSA just took the Income Assignment from delinquent Native American farmers such as his mother and father, across the street to BIA and filed it, whereas nothing comparable occurred when a White

farmer's loan became delinquent (Complainant's Exhibit C-I, at page 6). He also swore that White farmers enjoyed a "chummy" relationship with the supervisor of the FSA county office where FSA farm loans were made and administered. "White farmers could just drop in anytime and you could hear how chummy everyone was....The treatment of Indian customers was completely different – definitely not 'chummy'. You could only come in after making an appointment on one day of the week...." The allegations set forth in his 1999 affidavit were reiterated and expanded upon in the affidavit Complainant gave on January 22, 2008, that is attached to Complainant's Position Paper in which he attests that its stated facts are true and accurate and have not been disputed by USDA. Once again, Complainant swore in attesting to the factual accuracy of his Position Paper, that when he went to the local county FSA offices he observed White farmers being treated better than Native Americans. The White farmers were treated as friends and neighbors; Native American farmers were patronized. In sum, his descriptions of the visits he made to FSA's County office with and on behalf of his parents, attest to his parents being denied more beneficial financing and refinancing of their loans with less onerous methods for satisfying these loans that FSA could provide and customarily did provide to White Farmers.

Despite the fact that the Complainant's first affidavit was given to USDA investigators in 1999, and that the Agency has had the latest more expansive affidavit since its filing in January, Respondent has not provided any evidence to refute these charges other than to say they consist of unsupported speculation by Complainant. To the contrary, the statements contained in the affidavits constitute unrefuted evidence from an eyewitness who swears he observed animus and prejudice in the way the FSA official in

charge of the County office treated Native American farmers when compared with the treatment he showed White farmers in his administration of the FSA farm loan program.

His affidavits provide the only sworn testimony in evidence going to the reason why the Wilkinsons were dispossessed from their farm and homestead by the collaborative actions of BIA and FSA that the federal courts have held to be illegal. Actions these government agencies could not have taken against any farmer of another race in North Dakota since only Native Americans have their land held in trust for them by the government.

As against this, the Agency argues that Complainant was once convicted of misappropriation of tribal funds and false statements, and for that reason his testimony should be rejected as lacking credibility. Certainly, this circumstance affects the weight that should be given his testimony when compared to that of others. But there is no other evidence before me from anyone besides that contained in the declarations of two employees of FSA stationed in Washington, D.C. whose statements are limited to their review of the loan paperwork that was generated.

The declarations do show that the loans to the Wilkinsons were adjusted by FSA through debt restructuring and forbearance; circumstances that will be taken into consideration as possible mitigating factors when damages are assessed. However, they do not controvert Complainant's sworn testimony about the way his parents as Native American were treated compared to the treatment shown Whites by the FSA County office.

The fact that the Income Assignments were taken pursuant to regulations, as the Agency points out, does not mean that FSA officials had authority to use them illegally.

It is illegal to circumvent a North Dakota mortgagor's protections under that State's foreclosure laws, and this is how the Income Assignments were used and how racial discrimination was practiced by FSA against the Wilkinsons as Native American farmers. They were used to dispossess and confiscate the Wilkinson homestead and farmland so that FSA could collect on the indebtedness through the land being leased out for farming by others over the objections of the Wilkinsons.

Nine years have passed since Complainant gave his first affidavit to the Agency.¹ In all that time the Agency has developed no evidence to refute his charges. The officials who were accused of discriminatory racist conduct towards the Wilkinsons as Native Americans are employees of the Agency and the ability to ascertain the truth and validity of Complainant's charges have always been within the Agency's control. There was an investigation in 1999 that referenced an earlier one in 1995. *See* Memorandum to Rosalind D. Gray, Director Office of Civil Rights from Investigators Sheppard and

¹ Shortly after Complainant gave his November 17, 1999 affidavit to USDA investigators, all action on his complaint came to a halt. On November 24, 1999, a class action was filed in the United States District Court, District of Columbia, on behalf of Native American members of the Three Affiliated Tribes of the Fort Berthold Reservation who experienced discrimination in FSA's financing program via farm ownership loans. *Keepseagle v. Johanns*, Civil Action No. 99-3119. Though Complainant has contended he was not a party to this lawsuit, USDA required him to formally opt out of it before his discrimination complaint would be considered. On November 10, 2005, such an opt-out order was obtained. Meetings and correspondence with OCR to settle this discrimination complaint then took place. On August 30, 2006, OCR denied Complainant's claim and stated that settlement negotiations would not be considered. On September 29, 2006, Complainant requested OCR to reconsider and, alternatively, filed a Request For Formal Proceedings before an Administrative Law Judge. On December 11, 2006, OCR wrote to Complainant's attorney that it was processing the request for formal proceeding and that a record for submission to the Administrative Law Judge was being prepared. On September 17, 2007, the proceeding was docketed with the Hearing Clerk for the Office of Administrative Law Judges and was assigned to me on September 18, 2007. Since then, teleconferences were conducted to narrow the issues in anticipation of holding a hearing and various motions have been filed. To date, the Casetrak docket for this proceeding shows 29 separate entries for the filing of position statements, summaries of teleconferences, orders, and a number of motions including motions that my rulings and orders be reconsidered. On March 20, 2008, complainant moved for Summary Judgment and it was decided that the issue of whether there is actionable discrimination would be based on the record, and if decided in Complainant's favor, a hearing to determine the damages that should be awarded would then be held. This explanatory footnote has been included to show what has transpired to delay action on this Complaint that was initiated in 1990; and why its present resolution within 180 days of the filing of the Section 741 Complaint Request as envisioned by the rules of practice (7 C.F.R. § 15 f.16(b)), cannot be achieved.

Wright, dated December 3, 1999 (Complainant's Exhibit C-2, at page 2). But the Agency has not produced any evidence to refute Complainant's charges other than the two declarations and exhibits prepared by its employees in Washington, D.C. that: (1) give the details of the Wilkinson loans emphasizing restructuring efforts and instances of forbearance; and (2) show that income assignments were also taken from White farmers under vastly different conditions and without the dire consequences visited upon Ernest and Mollie Wilkinson. In these circumstances a negative inference is necessarily drawn against the Agency. *See In re: Sid Goodman and Co., Inc.*, 49 Agric. Dec. 1169, 1188 (1990); *Ludwig Casca*, 34 Agric. Dec. 1917, 1929-1930 (1975), *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L Ed. 2d 810 (1976). As stated in *Casca*, 34 Agric. Dec., at 1930:

'It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted.' Lord Mansfield, in *Blatch v. Archer*, Cowp. 66 quoted with approval in Wigmore, *Evidence* (3rd ed. 1940), § 285.

The preponderance of evidence in this proceeding proves that Ernest and Mollie Wilkinson as Native Americans, and because they were Native Americans, were discriminated against by FSA in violation of the ECOA in FSA's administration of its farmer loan program when they were required to execute BIA "Assignment of Income from Trust Property" forms that were used when their loans became delinquent to illegally dispossess them from their farmland and homestead.

1. There was direct evidence proving this discrimination was not inadvertent in the form of the uncontroverted eyewitness testimony by Complainant who observed ongoing animus, prejudice and discriminatory intent by the FSA local officials who administered the loan program when they dealt with his parents.

2. In addition, analysis of the impact of this FSA requirement that was imposed on his parents shows that there was no equivalent negative consequence to White North Dakota farmers when their loan payments became delinquent. FSA did not undertake to force any White farmers to involuntarily lose their farmlands and homesteads without observance of the protections of North Dakota's mortgage foreclosure laws.

3. Moreover, the Wilkinsons, as Native Americans, suffered discrimination in the form of disparate treatment in that no White Farmer in North Dakota was required to sign a form that could be used in the way the BIA form was used. Though FSA has supplied a Declaration by the Director of its Loan Making Division of FSA Farm Loan Programs stating that assignments of income were also employed as a condition of loans to White farmers, the illustrative USDA-FmHA form attached to the Declaration captioned "Request for Obligation of Funds", that a White North Dakota farmer apparently gave to FmHA in 1989, is not equivalent to the BIA "Assignment of Income from Trust Property" form that the Wilkinson's were required to execute that resulted in the illegal confiscation of their farm and homestead as a consequence of the collection of their FSA loans. Inasmuch as White farmers do not have their farms held in trust for them by a government entity akin to the BIA, an assignment of income form could not be used in avoidance of the protections they have under North Dakota's foreclosure laws.

In every sense then, Ernest and Mollie Wilkinson, as Native Americans, were discriminated against by FSA in violation of the ECOA. *See, Faulkner v. Glickman*, 172 F.Supp.2d 732, 737 (D.Md. 2001); *AB & S Auto Service, Inc. v. South Shore Bank of Chicago*, 962 F. Supp. 1056, 1060(N.D. Ill.1997); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

The next stage of this proceeding shall be to hold a hearing on June 25-26, 2008, in Washington, D.C. to develop evidence respecting the damages that should be awarded to Complainant for the losses suffered by his parents as a result of the discrimination against them by FSA.

Dated: June 03, 2008

Victor W. Palmer
Administrative Law Judge